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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,805	11/18/2003	Marc-Andre Valiquette	2257-5A	5187
7590 05/23/2005			EXAMINER	
E. F. & Co 316 Knowlton Road Lac Brome, QC J0E 1V0 CANADA			NGUYEN, SON T	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/715,805	VALIQUETTE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Son T. Nguyen	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 March 2005.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-12 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1 and 3-12 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 18 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |



## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1,3-12** are rejected under 35 U.S.C. 103(a) as being unpatentable over Feldman (US 6298600) in view of Dion (US 6219969) and Mosse et al. (US 4294037).

For claims 1 & 11, Feldman teaches a gardening system comprising a container 62 having a bottom wall and a side wall extending upwardly therefrom, a soil support insert 50-57 spaced from said bottom wall to define a space between said bottom wall and said soil support insert, at least one wall 54 extending downwardly from said soil support member to define a cavity, water 71 in said container, an air-space between an upper surface of said water and said soil support member (see fig. 5), and growing medium 76. However, Feldman is silent about a plurality of elongated slots in said downwardly extending wall, a non-soil growing medium within said cavity, said non-soil growing medium including mycorrhizal fungi, and the soil on top of said non-soil growing medium.

Dion teaches a soil insert having a plurality of elongated slots 32 to allow water to be soaked up by the growing medium 12. It would have been an obvious substitution of functional equivalent to substitute the perforations 55 of Feldman with slots on sidewall

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of the soil insert as taught by Dion, since both types of opening would allow water to be soaked up by the growing medium, and thus, provide water to the plant.

Mosse et al. teach a non-soil growing medium including a vesicular-arbuscular mycorrhizal fungi. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a non-soil growing medium within said cavity, said non-soil growing medium including mycorrhizal fungi as taught by Mosse et al. in the gardening system of Feldman, depending on what type of plant being grown therein because the fungi can enhance uptake of nutrient by the plant grown therein (abstract of Mosse et al.). In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the soil of Feldman as modified by Dion and Mosse et al. on top of the non-soil growing medium, depending on where one wishes to have the fungi for enhancing uptaking of nutrient for the plant.

For claim 3, Feldman as modified by Dion and Mosse et al. is silent about wherein said elongated slots have a width of between 1.5 and 3 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the slots of Feldman as modified by Dion and Mosse et al. with a width of between 1.5 and 3 mm, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art. In re Aller, 105 USPQ 233.

For claim 4, in addition to the above, Mosse et al. teach peat or rockwool for a medium (col. 4, lines 42-59). It would have been obvious to one having ordinary skill in

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the art at the time the invention was made to employ vermiculite or any root growth promoting material such as peat or rockwool as further taught by Mosse et al. for the non-growing medium of Feldman as modified by Dion and Mosse et al., depending on which type of plant grown therein and in order to be environmentally sound.

For claim 5, Feldman as modified by Dion and Mosse et al. further teaches a plurality of walls (ref. 54 as taught by Feldman) extending downwardly to thereby define a plurality of cavities, each of said downwardly extending walls having a plurality of elongated slots (ref. 32 as taught by Dion) formed therein.

For claim 6, Feldman as modified by Dion and Mosse et al. further teaches wherein said plurality of cavities comprises at least 2 cavities in a side by side relationship (see fig. 1 of Felman).

For claim 7, Feldman as modified by Dion and Mosse et al. further teaches wherein said container has a plurality of said soil support inserts (ref. 54 of Feldman) placed therein.

For claim 8, Feldman as modified by Dion and Mosse et al. further teaches wherein said soil support inserts have an overall arcuate configuration (Feldman, col. 4, lines 34-35, ref. 54 is kidney bean shaped, which is arcuate).

For claim 9, Feldman as modified by Dion and Mosse et al. further teaches wherein said elongated slots (ref. 32 as modified by Dion) are defined by parallel ribs therebetween, each of said ribs having an arcuate inner surface to prevent damage to the roots growing therethrough (see fig. 5 of Dion for arcuate ribs 32,64).

For claim 10, Feldman as modified by Dion and Mosse et al. further teaches wherein said elongated slots are defined by parallel ribs therebetween, each of said ribs being made of a compliant material to allow root growth and root diameter increment therethrough (see fig. 5 of Dion and claim 9 above).

For claim 12, Feldman as modified by Dion and Mosse et al. teaches a method comprising the step of supplying the above described gardening system with modification teachings from Dion and Mosse et al. which include the steps of putting a non-soil growing medium (Mosse et al.) and placing a vesicular-arbuscular mycorrhizal inoculum (Mosse et al.).

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1,3-12 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any


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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Son T. Nguyen  
Primary Examiner  
Art Unit 3643

stn